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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 BOBBY SHAWN JANOE,
12 CDCR #J-25333,

13 Plaintiff,

14 vs.

15 K. RASKE,

16 Defendant.
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Civil No. 08-1603 L (CAB)

**ORDER DIRECTING U.S.
MARSHAL TO EFFECT SERVICE
OF FIRST AMENDED
COMPLAINT PURSUANT TO FED.
R. CIV. P. 4(c)(3) AND 28 U.S.C.
§ 1915(d)**

19 **I. Procedural History**

20 On August 29, 2008, Bobby Shawn Janoe ("Plaintiff"), a state prisoner currently
21 incarcerated at the California Substance Abuse Treatment Facility located in Corcoran,
22 California, proceeding in pro se, filed a civil rights Complaint pursuant to 42 U.S.C. § 1983.
23 Plaintiff did not prepay the \$350 filing fee mandated by 28 U.S.C. § 1914(a); instead, he filed
24 a Motion to Proceed *In Forma Pauperis* ("IFP") pursuant to 28 U.S.C. § 1915(a) [Doc. No. 2].

25 On October 27, 2008, this Court granted Plaintiff's Motion to Proceed *IFP* but
26 simultaneously dismissed his Complaint for failing to state a claim pursuant to 28 U.S.C.
27 §§ 1915(e)(2) & 1915A(b)(1). *See* Oct. 27, 2008 Order at 6-7. Nonetheless, the Court granted
28 Plaintiff leave to file an Amended Complaint in order to correct the deficiencies of pleading

1 identified in the Court's Order. (*Id.*) On December 4, 2008, Plaintiff filed his First Amended
 2 Complaint ("FAC").

3 **II. Sua Sponte Screening per 28 U.S.C. § 1915(e)(2) and § 1915A**

4 As the Court stated in its previous Order, the Prison Litigation Reform Act obligates the
 5 Court to review complaints filed by all persons proceeding IFP and those, like Plaintiff, who are
 6 "incarcerated or detained in any facility [and] accused of, sentenced for, or adjudicated
 7 delinquent for, violations of criminal law or the terms or conditions of parole, probation, pretrial
 8 release, or diversionary program," "as soon as practicable after docketing." *See* 28 U.S.C.
 9 §§ 1915(e)(2) and 1915A(b). Under these provisions, the Court must sua sponte dismiss
 10 prisoner and all other IFP complaints, or any portions thereof, which are frivolous, malicious,
 11 fail to state a claim, or which seek damages from defendants who are immune. *See* 28 U.S.C.
 12 §§ 1915(e)(2)(B) and 1915A; *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc)
 13 (§ 1915(e)(2)); *Resnick v. Hayes*, 213 F.3d 443, 446 (9th Cir. 2000) (§ 1915A).

14 Before amendment by the PLRA, the former 28 U.S.C. § 1915(d) permitted sua sponte
 15 dismissal of only frivolous and malicious claims. *Lopez*, 203 F.3d at 1126, 1130. However 28
 16 U.S.C. §§ 1915(e)(2) and 1915A now mandate that the court reviewing an IFP or prisoner's suit
 17 make and rule on its own motion to dismiss before directing that the Complaint be served by the
 18 U.S. Marshal pursuant to FED.R.CIV.P. 4(c)(2). *Id.* at 1127 ("[S]ection 1915(e) not only permits,
 19 but requires a district court to dismiss an in forma pauperis complaint that fails to state a
 20 claim."); *see also Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (discussing
 21 § 1915A).

22 Here, the Court finds that Plaintiff's claims in his First Amended Complaint survive the
 23 sua sponte screening required by 28 U.S.C. §§ 1915(e)(2) and 1915A(b), and that Plaintiff is
 24 therefore automatically entitled to U.S. Marshal service on his behalf. *See Lopez*, 203 F.3d at
 25 1126-27; 28 U.S.C. § 1915(d) ("The officers of the court shall issue and serve all process, and
 26 perform all duties in [IFP] cases."); FED.R.CIV.P. 4(c)(3) (providing that "service be effected by
 27 a United States marshal, deputy United States marshal, or other officer specially appointed by
 28 the court . . . when the plaintiff is authorized to proceed *in forma pauperis* pursuant to 28 U.S.C.

§ 1915.”). Plaintiff is cautioned, however, that “the sua sponte screening and dismissal procedure is cumulative of, and not a substitute for, any subsequent Rule 12(b)(6) motion that [a defendant] may choose to bring.” *Teahan v. Wilhelm*, 481 F. Supp. 2d 1115, 1119 (S.D. Cal. 2007).

III. Conclusion and Order

Good cause appearing, **IT IS HEREBY ORDERED** that:

1. The Clerk shall issue a summons upon Defendant and forward it to Plaintiff along with a blank U.S. Marshal Form 285. In addition, the Clerk shall provide Plaintiff with a certified copy of this Order, and certified copies of his First Amended Complaint and the summons for purposes of serving this Defendant. Upon receipt of this “IFP Package,” Plaintiff is directed to complete the Form 285s as completely and accurately as possible, and to return them to the United States Marshal according to the instructions provided by the Clerk in the letter accompanying his IFP package. Thereafter, the U.S. Marshal shall serve a copy of the First Amended Complaint and summons upon each Defendant as directed by Plaintiff on each Form 285. All costs of service shall be advanced by the United States. *See* 28 U.S.C. § 1915(d); FED.R.CIV.P. 4(c)(3).

2. Defendant is thereafter **ORDERED** to reply to the First Amended Complaint within the time provided by the applicable provisions of Federal Rule of Civil Procedure 12(a). *See* 42 U.S.C. § 1997e(g)(2) (while Defendants may occasionally be permitted to “waive the right to reply to any action brought by a prisoner confined in any jail, prison, or other correctional facility under section 1983,” once the Court has conducted its sua sponte screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b), and thus, has made a preliminary determination based on the face on the pleading alone that Plaintiff has a “reasonable opportunity to prevail on the merits,” Defendants are required to respond).

3. Plaintiff shall serve upon Defendant or, if appearance has been entered by counsel, upon Defendant’s counsel, a copy of every further pleading or other document submitted for consideration of the Court. Plaintiff shall include with the original paper to be filed with the Clerk of the Court a certificate stating the manner in which a true and correct copy of any

1 document was served on Defendant, or counsel for Defendant, and the date of service. Any
2 paper received by the Court which has not been filed with the Clerk or which fails to include a
3 Certificate of Service will be disregarded.

4 **IT IS SO ORDERED.**

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6 DATED: December 12, 2008

7 
8 M. James Lorenz
United States District Court Judge